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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130805680-4200-01]

RIN 0648-BD58

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagic Resources in the Gulf of Mexico and
Atlantic Region; Framework Action

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in a framework action to the Fishery Management Plan for the Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region (FMP) (Framework Action), as prepared and submitted by the South Atlantic and Gulf of Mexico Fishery Management Councils (Councils). If implemented, this rule would allow transfer of Atlantic migratory group Spanish mackerel caught in excess of the trip limit with gillnet gear from one vessel with a Federal Spanish mackerel commercial permit to another vessel with a Federal Spanish mackerel commercial permit that has not yet harvested the trip limit; allow the receiving

vessel involved in a Spanish mackerel transfer-at-sea to have three gillnets onboard instead of two; and modify the commercial trip limits for king mackerel in the Florida east coast subzone. This rule also proposes an administrative change to correct an inadvertent error in a prior rulemaking unrelated to this Framework Action. The purpose of this rule is to modify the restrictions on transfer-at-sea and gillnet allowances for Atlantic migratory group Spanish mackerel to minimize dead discards of Spanish mackerel and modify the king mackerel trip limit in the Florida east coast subzone to optimize utilization of the resource.

DATES: Written comments must be received on or before [insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on the proposed rule, identified by "NOAA-NMFS-2013-0162" by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0162, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Kate Michie, Southeast Regional Office, NMFS, 263 13th Avenue South, St.

Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the Framework Action, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA) and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, telephone: 727-824-5305, or e-mail: kate.michie@noaa.gov.

SUPPLEMENTARY INFORMATION: The coastal migratory pelagic (CMP) fishery of the South Atlantic and the Gulf of Mexico (Gulf) is managed under the FMP. The FMP was prepared by the Councils and

implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires that NMFS and regional fishery management councils prevent overfishing and achieve, on a continuing basis, the optimum yield from federally managed fish stocks. These mandates are intended to ensure that fishery resources are managed for the greatest overall benefit to the nation, particularly with respect to providing food production and recreational opportunities, and protecting marine ecosystems. To further this goal, the Magnuson-Stevens Act requires fishery managers to minimize bycatch and bycatch mortality to the extent practicable.

Management Measures Contained in this Proposed Rule

This rulemaking would allow transfer-at-sea of Spanish mackerel in gillnets between vessels with Federal Spanish mackerel commercial permits that are using gillnet gear and allow vessels engaged in this transfer activity to have three gillnets onboard. This rulemaking would also modify the Atlantic king mackerel Florida east coast subzone trip limit so that during March 1 through March 31, if 70 percent or more of the quota has been harvested, the trip limit would remain at 50

fish per vessel per trip; however, if less than 70 percent of the quota has been harvested during that time, the trip limit would increase to 75 fish per vessel per trip until March 31. The purpose of this rulemaking is to modify the restrictions on transfer-at-sea and gillnet allowances for Atlantic migratory group Spanish mackerel to minimize dead discards of Spanish mackerel and modify the king mackerel trip limit in the Florida east coast subzone to optimize utilization of the resource.

Transfer-at-Sea and Gillnet Gear Restriction Modifications

Currently in the South Atlantic, transfer-at-sea of harvested fish is prohibited for any species under a commercial trip limit, and only two gillnets are allowed on a federally permitted Spanish mackerel vessel at one time. In some instances, the Spanish mackerel trip limit may be exceeded with just one gillnet set, and the excess fish must be discarded. Many Spanish mackerel caught in gillnet gear die due to trauma experienced during capture. This proposed rule would allow a portion of a gillnet and the Spanish mackerel within the gillnet to be transferred from a federally permitted Spanish mackerel vessel that has reached the Spanish mackerel trip limit to another federally permitted Spanish mackerel vessel that has not yet reached the trip limit. Allowing transfer of Spanish mackerel in gillnets between vessels with Federal Spanish

mackerel commercial permits that are using gillnet gear may reduce dead discards and minimize waste.

The transfer-at-sea of harvested fish would only be allowed if all the following conditions are met: (1) the owner or operator of both vessels involved in the transfer must report the transfer by telephone to the NOAA Office of Law Enforcement in Port Orange, Florida, prior to the transfer; (2) harvesting gear must be allowable gillnet gear, as specified in § 622.377(b); (3) transfer can only take place in Federal waters between two vessels with valid commercial permits for Spanish mackerel; (4) the receiving vessel must possess no more than three gillnets after the transfer is completed; (5) all Spanish mackerel exceeding the applicable daily vessel limit shall remain in the gillnet until transferred; (6) the quantity of Spanish mackerel transferred to any single vessel shall not exceed the applicable daily trip limit; and (7) transfers of Spanish mackerel may only occur once per vessel per trip.

Currently, only two gillnets with different mesh sizes are allowed to be possessed and used on federally permitted Spanish mackerel vessels. This proposed rule would also modify the two gillnet possession restriction in order to account for the portion of a third net that would be present onboard a vessel that receives Spanish mackerel transferred at sea. Only vessels

engaged in this transfer activity would be allowed to have three gillnets onboard.

Atlantic King Mackerel Trip Limit Modification in the Florida East Coast Subzone

This proposed rule would modify the commercial trip limits for Atlantic king mackerel in the Florida east coast subzone, which, from November 1 through March 31, is located in the area south of 29°25' N. lat. (a line directly east from the Flagler/Volusia County, Florida, boundary) and north of 25°20.4' N. lat. (a line directly east from the Miami-Dade/Monroe County, Florida, boundary). The current system of trip limits allows for an increase in the rate of landings, which at times can cause the commercial sector to close before the religious Lenten season ends, when demand for fish is typically substantially greater.

This rule proposes to extend the period of time the current 50-fish trip limit is in place each year from November through January to November through February. The rule also proposes to lower the threshold harvest level from 75 percent of the quota to 70 percent of the quota to determine whether or not the trip limit would increase during the month of March. Therefore, if implemented, during March 1 through March 31, if 70 percent or more of the quota has been harvested, the trip limit would

remain at 50 fish per vessel per trip; however, if less than 70 percent of the quota has been harvested, the trip limit would increase to 75 fish per vessel per trip until March 31. From April 1 through October 31, the Florida east coast subzone is no longer part of the Gulf migratory group king mackerel area; it is part of the Atlantic migratory group king mackerel area. Therefore, during this period, the provisions proposed in this rule would not apply. The trip limit modifications proposed through this rule are expected to help minimize lost fishing opportunities and optimize revenues of the coastal migratory pelagics fishery.

Additional Changes Contained in this Proposed Rule

Drift gillnets for all coastal migratory pelagic species and run-around gillnets for king mackerel were prohibited in the South Atlantic exclusive economic zone (EEZ) through the final rule implementing Amendment 3 to the FMP (54 FR 29561, July 13, 1989). However, the regulations currently at § 622.387, which address prevention of gear conflicts between hook-and-line and gillnet vessels in the South Atlantic EEZ, were inadvertently not removed at the time when the final rule for Amendment 3 was implemented. This rule proposes to correct this mistake by removing the regulations at § 622.387. This revision is unrelated to the Framework Action.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Framework Action, the FMP, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an IRFA for this rule, as required by section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603. The IRFA describes the economic impact that this proposed rule, if implemented, would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble. A copy of the full analysis is available from the NMFS (see ADDRESSES). A summary of the IRFA follows.

The purpose of this rulemaking is twofold: (1) to eliminate the current prohibition on the transfer of Spanish mackerel by gillnet and (2) to modify trip limits for king mackerel that may extend the length of the open fishing season. This rule proposes to eliminate the current prohibition on the transfer of Spanish mackerel by gillnet to reduce dead discards and minimize waste. This proposed rule would modify trip limits

for king mackerel to extend the length of the open fishing season, especially into the Lenten season when market demand is greater. The Magnuson-Stevens Act provides the statutory basis for these two proposed actions.

No duplicative, overlapping, or conflicting Federal rules have been identified.

The rule would apply directly to businesses in the finfish fishing industry (NAICS 114111) that harvest Atlantic migratory group Spanish mackerel by gillnet and king mackerel in the Florida east coast subzone. On June 20, 2013, the U.S. Small Business Administration (SBA) issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398). That rule increased the size standard for commercial finfish harvesters from \$4.0 million to \$19.0 million in annual receipts. The average ex-vessel revenue from Spanish mackerel harvested from Federal waters is estimated to be \$31,000, which is substantially less than the \$19 million SBA size standard. Consequently, all of the businesses that hold at least one of the 1,736 commercial vessel permits for Spanish mackerel (as of November 5, 2013) are presumed to be small businesses. The average ex-vessel revenue from king mackerel harvested in Federal waters is estimated to be \$35,000. Therefore, it is presumed that all of the businesses that hold

at least one of the 1,658 valid and renewable/transferrable king mackerel permits (a commercial vessel permit for king mackerel plus a commercial king mackerel gillnet permits as of September 30, 2013) are small businesses.

This rule would end the prohibition on transfers of Spanish mackerel by gillnet in the EEZ. Presently, if a vessel catches a quantity of Spanish mackerel in gillnets in the EEZ that exceeds the trip limit, the excess catch cannot be transferred to another vessel. Instead the excess catch has to be discarded back into the water, although many to most of the Spanish mackerel are dead. If implemented, the proposed rule would allow that transfer under certain conditions and would require the operator(s) of the two vessels engaged in a transfer to report the transfer by telephone to the NOAA Office of Law Enforcement in Port Orange, Florida, prior to the transfer. Any transfer would be voluntary, and a small business would participate in a transfer if it has a net economic benefit, and would not, if it has a net economic cost. It is unknown how many small businesses may participate in a transfer; however, the ability to transfer could generate a net economic benefit to small businesses.

NMFS considered one alternative, the no action alternative, to the proposed action of eliminating the prohibition on the

transfer of Spanish mackerel by gillnet. The status quo alternative was rejected because it would not provide the potential economic benefit to small businesses as described above.

This rule would also change the commercial trip limit for king mackerel in the Florida east coast subzone, which could act to increase the length of the open fishing season. The proposed modified trip limit could potentially decrease the rate of landings in January, February and March; increase the average length of the open fishing season; reduce total landings for the season, and increase ex-vessel revenues from higher landings during the Lenten season. The magnitudes of these potential economic benefits and costs are unknown.

NMFS considered one status quo alternative and two non-status quo alternatives to the proposed action to modify the trip limit for king mackerel in the Florida east coast subzone. The status quo commercial trip limit is 50 fish from November 1 through January 31 each year; and then, beginning on February 1 and continuing through March 31, if 75 percent or more of the Gulf group Florida east coast subzone quota has been taken by January 31, the trip limit remains 50 fish. However, if less than 75 percent of the quota has been taken by January 31, the

trip limit increases to 75 fish. The first of the rejected non-status quo alternatives would fix the trip limit to 50 fish for the entire fishing season. The adverse impact of this alternative is that it would not provide the flexibility to allow small businesses to increase landings of king mackerel when demand is greater during the Lenten season. The second of the non-status quo alternatives would fix the trip limit to 75 fish. This second alternative would likely reduce landings of king mackerel and associated dockside revenues when demand is greater during the religious Lenten season because its fixed trip limit of 75 fish would likely result in earlier closures, potentially before or at the beginning of the period of heightened demand. The status quo alternative would maintain the current trip limits and could result in an open fishing season that closes before the season of greater demand ends.

Finally, this rule also removes language in the codified text regarding prevention of gear conflicts between hook-and-line and gillnet vessels in the South Atlantic EEZ. This change corrects an inadvertent error in the text, as discussed in the preamble. The regulation contained in § 622.387 was necessary before separate quotas, trip limits, and gillnet permits were implemented for the harvest of king mackerel off Florida. Since implementation of those management measures, the impact and

relevance of § 622.387 have been zero. Consequently, its removal would have no impact on small businesses.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Gillnet, Mackerel, Reporting and recordkeeping requirements, South Atlantic, Trip limits.

Dated: March 13, 2014.

Eileen Sobeck,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.377, paragraph (b)(2)(iii) is revised and paragraph (b)(2)(vi) is added to read as follows:

§ 622.377 Gillnet restrictions.

* * * * *

(b) * * *

(2) * * *

(iii) No more than two gillnets, including any net in use, may be possessed at any one time, except for a vessel with a valid commercial vessel permit for Spanish mackerel engaged in a transfer as specified in paragraph (b)(2)(vi) of this section. If two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm), except for a vessel with a valid commercial vessel permit for Spanish mackerel engaged in a transfer as specified in paragraph (b)(2)(vi) of this section, in which case the vessel may possess two gillnets of the same mesh size provided that one of the nets is transferred to that vessel.

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(vi) A portion of a gillnet may be transferred at sea only in the EEZ and only from a vessel with a valid commercial vessel permit for Spanish mackerel that has exceeded a trip limit specified in § 622.385 (b) to another vessel with a valid

commercial vessel permit for Spanish mackerel that has not yet reached the trip limit (the receiving vessel). Only one such transfer is allowed per vessel per day. In addition, to complete a legal transfer at sea, all of the following must apply:

(A) All fish exceeding the applicable commercial trip limit may not be removed from the gillnet until the transfer is complete (i.e., the gillnet is onboard the receiving vessel). The fish transferred to the receiving vessel may not exceed the applicable commercial trip limit.

(B) The receiving vessel may possess no more than three gillnets on board after the transfer is complete.

(C) Prior to cutting the gillnet and prior to any transfer of Spanish mackerel from one vessel to another, the owner or operator of both vessels must contact NMFS Office for Law Enforcement, Port Orange, Florida, phone: 1-386-492-6686.

3. In § 622.385, the third sentence in the introductory text and paragraphs (a)(2)(i)(A) and (B) are revised to read as follows:

§ 622.385 Commercial trip limits.

* * * Except for Atlantic migratory group Spanish mackerel harvested by gillnet, as specified in § 622.377 (b)(2)(vi), a

species subject to a trip limit specified in this section taken in the EEZ may not be transferred at sea, regardless of where such transfer takes place, and such species may not be transferred in the EEZ. * * *

* * * * *

(a) * * *

(2) * * *

(i) * * *

(A) From November 1 through the end of February--not to exceed 50 fish.

(B) Beginning on March 1 and continuing through March 31--

(1) If 70 percent or more of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken--not to exceed 50 fish.

(2) If less than 70 percent of the Florida east coast subzone quota as specified in § 622.384(b)(1)(i)(A) has been taken--not to exceed 75 fish.

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§ 622.387 [Removed and Reserved]

4. Remove and reserve § 622.387.

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Date: 03/19/2014]